

## PART 2018 - GENERAL

### Subpart F – Availability of Information

This instruction supplements the following paragraph of RD Instruction 2018-F.

#### 2018.254 Penalties and court review.

Occasionally, employees may receive a subpoena where the United States is not a party to the litigation. USDA employees are prohibited from appearing in any proceeding arising out of an employee's official duties with USDA or relating to their employment with USDA, unless authorization is received from the head of the employee's agency and from the Office of General Counsel. Receipt of a subpoena is a very time-conscious issue and requires an employee's immediate attention.

Guide 1, "Guidelines For Subpoenas Of USDA Employees Where The United States Is Not A Party To The Litigation", of this instruction contains detailed instructions on the process to follow if an employee receives a subpoena. In addition to Guide 1, there are six exhibits used in various situations. Below is a brief description of the six exhibits. Refer to Guide 1 for complete explanations and use of the exhibits.

- (a) Exhibit 1 is a copy of the regulations (7CFR § 1.210, *et seq.*) that should be faxed if the attorney issuing the subpoena wants testimony.
- (b) Exhibit 2, "TO WHOM IT MAY CONCERN" letter, must accompany the faxed Exhibit 1 regulations.
- (c) If the attorney does not respond or refuses to withdraw the subpoena, immediately complete Exhibit 3 (Directions Concerning Compliance with Subpoena by USDA Employee) and fax it to the appropriate agency official for determination as to authorization to testify.
- (d) Exhibit 4, "Denial Of Authorization for USDA Employee To Appear In Proceeding To Which The United States Is Not A Party", will be provided to the employee when the agency denies authorization to testify.

(e) If an employee is authorized to testify, h/she should review the witness preparation materials “Preparing to Testify” (Exhibit 5).

(f) Exhibit 6 is a sample of an Affidavit authenticating records an employee may sign when agency records are provided to an attorney who wishes to introduce them into evidence.

Attachments: Guide 1, Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5, and Exhibit 6

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